

Appl. No. : 09/840,548  
Filed : April 23, 2001

#### REMARKS

The July 6, 2007 Office Action was based on pending Claims 1-9, 11, 13-16, and 21-28. This amendment amends Claims 1, 13, 21, and 25. Thus, after entry of this amendment, Claims 1-9, 11, 13-16, and 21-28 are pending and presented for further consideration.

The July 6, 2007 Office Action rejects Claims 1-9, 11, 13-16, and 21-28 under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,668,857 to McHale in view of Pounds et al. US 5,517,556.

#### **REJECTION OF CLAIMS 1-9, 11, 13-16 and 21-28 under 35 U.S.C. 103(a)**

##### **Claim 1**

The Applicant notes that the claims are amended, for example as in Claims 1, to recite "A method of communicating a message via a computer network, the method comprising:

transmitting a message from a first server to a target transceiver via a second server wherein the second server comprises a plurality of outgoing dial-up modems and wherein the outgoing dial-up modems are configured to fax the message to recipients the target transceiver via a public switched telephone network wherein the second server is selected such that the target transceiver and the second server are located within a same local-toll area of the public switched telephone network;

determining with a processor availability of the outgoing dial-up modems at the second server;

if none of the outgoing dial-up modems are available, applying a wait time wherein the wait time is based at least in part on the utilization of the outgoing dial-up modems;

determining whether at least one of the outgoing dial-up modems is available after the wait time; and

sending the message via an available outgoing dial-up modem and the public switched telephone network."

Similar changes are made to the other base claims 13, 21 and 25.

McHale fails to teach sending the message via an available outgoing dial-up modem and the public switched telephone network. Instead, McHale discloses

providing data communication from a network, such as the Internet, to a computer via an available modem. McHale's system also provides telephone service to the computer, but the modems do not receive or transmit data over a public switched telephone network.

McHale also teaches determining availability and status of modems in a modem pool (Col. 10, lines 12-13) and sending an indication that a modem is or is not available and a time interval before a modem should attempt communication with the selected modem (Col. 10, lines 27-30), but fails to teach determining whether at least one of the outgoing dial-up modems is available after the wait time. In contrast, an embodiment of the invention does determine whether at least one of the outgoing dial-up modems is available after the wait time and sends a message via an available outgoing dial-up modem and the public switched telephone network.

Pounds et al. teaches a telephone call processing system to process voice and data signals. Pounds teaches a variety of methods of handling voice and data signals, including determining whether a fax modem is available from the modem pool (see for example Figs. 14C, 15, and 18). However if no fax modem is available, the Pounds et al. systems notify the caller that no fax modems are available and the processing terminates at step "E" (see Figure 17A and col. 15, lines 28-29). Pounds also fails to teach determining whether at least one of the outgoing dial-up modems is available after the wait time and sending a message via an available outgoing dial-up modem and the public switched telephone network.

The Applicant also respectfully notes that McHale and Pounds et al. both fail to disclose or suggest selecting a second server such that the target transceiver and the second server are located within a same local-toll area of the public switched telephone network.

Because the references cited by the Examiner do not disclose, teach or suggest the combination of features recited in independent Claim 1, Applicant asserts that Claim 1 is not obvious in view of McHale and Pounds. Applicant therefore respectfully submits that Claim 1 is patentably distinguished over the cited references and Applicant respectfully requests allowance of Claim 1.

**Appl. No. : 09/840,548**  
**Filed : April 23, 2001**

**Claims 2-9, and 11**

Claims 2-9, and 11, which depend from Claim 1, are believed to be patentable for the same reasons articulated above with respect to Claim 1, and because of the additional features recited therein.

**Claim 13**

Although Claim 13 has different language than Claim 1, Claim 13 is believed to be patentable for similar reasons (where applicable), and because of the different features recited therein.

**Claims 14-16**

Claims 14-16, which depend from Claim 13, are believed to be patentable for the same reasons articulated above with respect to Claim 13, and because of the additional features recited therein.

**Claim 21**

Although Claim 21 has different language than Claim 1, Claim 21 is believed to be patentable for similar reasons (where applicable), and because of the different features recited therein.

**Claims 22-24**

Claims 22-24, which depend from Claim 21, are believed to be patentable for the same reasons articulated above with respect to Claim 21, and because of the additional features recited therein.

**Claim 25**

Although Claim 25 has different language than Claim 1, Claim 25 is believed to be patentable for similar reasons (where applicable), and because of the different features recited therein.

**Claims 26-28**

Claims 26-28, which depend from Claim 25, are believed to be patentable for the same reasons articulated above with respect to Claim 25, and because of the additional features recited therein.

**Appl. No. : 09/840,548**  
**Filed : April 23, 2001**

**No Disclaimers or Disavowals**

Although the present communication includes alterations to the claims and characterizations of claim scope and referenced art, the Applicants are not conceding in this application that previously pending claims are not patentable over the cited references. Rather, any alterations or characterizations are being made to facilitate expeditious prosecution of this application. The Applicants reserve the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child or related prosecution history shall not reasonably infer that the Applicants have made any disclaimers or disavowals of any subject matter supported by the present application.

The claims of the present application are different and possibly broader in scope than the claims as originally filed. To the extent any prior amendments or characterizations of the scope of any claim or referenced art could be construed as a disclaimer of any subject matter supported by the present disclosure, the Applicant hereby rescinds and retracts such disclaimer. Accordingly, the references previously considered in the application may need to be re-visited.

**Co-Pending Applications of Assignee**

Applicant wishes to draw to the Examiner's attention to the following co-pending applications of the present application's assignee.

<b>Serial Number</b>	<b>Title</b>	<b>Filed</b>
11/496,705	METHOD AND SYSTEM FOR FACSIMILE DELIVERY USING DIAL-UP MODEM POOLS	7/31/2006

**Appl. No.** : **09/840,548**  
**Filed** : **April 23, 2001**

**SUMMARY**

In view of the foregoing, the present application is believed to be in condition for allowance, and such allowance is respectfully requested. If further issues remain to be resolved, the Examiner is cordially invited to contact the undersigned such that any remaining issues may be promptly resolved.

Also, please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: October 9, 2007

By: 

James W. Ausley  
Registration No. 49,076  
Agent of Record  
Customer No. 20,995  
(951) 781-9231

4380253